1952.

File No. O. Homeopathic

Legal Dept. 52

A **BRANCH** p 1 (E)

Subject:— Opinions under the Bombay Homeopathic Act, 1951

File No. O. Homeopathic/52

576-A

C O N T E N T S.

Legal Department File No.O.Homoeopathic/52.

S.No.	R.I. / O.No.	Subject.	Pages.
	O. Homoeopathic/1952.	Opinions under the Bombay Homoeopathic Act, 1951.	
1.	~~1071A~~ 27.6.52.	Re. Members Shri S.R. Chugha and S.R.Wadia who are entitled to have their names entered in the register will have to apply to the Registration Tribunal for registration -	1 - 3.
2.	~~1232~~ 28.7.52.	Section- 18(3)(ii).- Whether it is compulsory for practitioners registered under the Bom.Medical Act, 1912 etc. to get themselves registered in part B of the Register under -	5 - 7.
3.	~~1742A~~ 21.10.52.	Re. Suggestion of Shri Dhavale to exempt or treat members of the Registration or Appellate Tribunal from registration -	9.
4.	~~2088/A~~	Re: Points raised by the Surgeon General upon the interpretation of certain provisions to xxxx sub-sec. 3 of sec. 18 of the Act.	11.

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Office of the R.L.A.

It appears that by Government Notification, Local Self Government & Public Health Department, No.6939/33 dated the 18th March 1952, Government has constituted a Registration Tribunal under section 19(1) of the Bombay Homoeopathic Act, 1951, consisting of (1) Shri V.K. Chugha, (2) Shri S.R.Wadia and (3) Shri V.V. Athalye. It has also by the same G.N. constituted an Appellate Authority under section 29(4) consisting of (1) Shri L.D. Dhawale, (2) Shri R.B. Patel and (3) Shri B.Das Gupta. The question raised for the R.L.A's consideration is whether Shri Chugha and Shri Wadia, who are members of the Registration Tribunal, have to apply for registration to the Registration Tribunal and similarly whether Shri Dhawale and Shri B.Das Gupta, who are members of the Appellate Authority, have to apply for registration to the Registration Tribunal.

2. It is a fundamental rule in the administration of justice that a person cannot be a judge in a cause wherein he is interested. "But although it is contrary to the general rule to make a person judge in his own cause, the legislature can, and no doubt in a proper case would, depart from that general rule, and an intention to do so being clearly expressed, the courts give effect to their enactment." (per Blackburn J. in Moray Feeds Trustees v. Gibbs L.R. 1 H.L. 93 at p.110: See Broom's Legal Maxims, 10th Edn. p.72). Section 19(1) of the Bombay Homoeopathic Act, 1951, provides that for the purpose of the preparation of the first register, the State Government may by notification in the Official Gazette constitute a Registration Tribunal consisting of three persons out of whom two shall be persons who are entitled to have their names entered in the register and shall appoint a Secretary of the Tribunal. It is apparent from this provision that the legislature did intend and also has expressly

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stated.....

stated that two of the members of the Registration Tribunal should be persons who are entitled to have their names entered in the register. Although section 19(1) says that the two members shall be persons who are entitled to have their names entered in the register, that does not mean that these two persons need not be registered. Consequently, there would be no legal objection to Shri Chugha and Shri Nadia being members of the Registration Tribunal who are entitled to have their names entered in the register and it would be quite competent for them to apply to the Registration Tribunal to have their names registered even though they happen to be members of the Registration Tribunal. Similarly, there would be no legal objection to Shri L.B. Bhosale and Shri B.Das Gupta applying to the Registration Tribunal for registering their names. The question whether they can also sit on the Appellate Authority in their own cases can be considered if and when it arises.

Sd/- P.N.Lal,
27/6.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.10714, dated the 27th June 1952.

4-Cs.

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15/6.

OFFICE OF THE R.L.A.

Registration of Homeopathic practitioners.

Bombay Homeopathy Act, 1951, Sec. 18(3)(ii).

The question for consideration is whether it is compulsory for practitioners registered under the Bombay Medical Act 1912 or the Bombay Medical Practitioners' Act, 1938 practising Homeopathy to get themselves registered in Part B of the Register under section 18(3)(ii) of the Bombay Homeopathic Act, 1951 or whether they can practise Homeopathy without registration and if not, whether any action can be taken against them.

There is no prohibition in the Bombay Homeopathic Act itself debarring persons who are not registered under the provisions of the Act from practising Homeopathy. That prohibition is contained in section 32 of the Bombay Medical Practitioners' Act, 1938 (as amended by Bombay Homeopathic Act, 1951) which enacts that "no person other than (i) a practitioner registered under Part II of this Act or (ii) a medical practitioner registered under the Bombay Medical Act, 1912 or (iii) a person whose name is entered in the list mentioned in section 18, or a person whose name is entered in the registerent maintained or kept under the Bombay Homeopathic Act, 1951 shall practise or hold himself out, whether directly or by implication, as practising for personal gain any system of medicine, surgery or midwifery." Any person contravening-ing provisions of section 32 is made punishable under section 34. It is clear from these provisions that before a person can practise any system of medicine etc. he must be registered under any of the Acts mentioned in section 32 of the Bombay Medical Practitioners Act, 1938. There is, however, no express prohibition against a person registered under any of the Acts mentioned in m section 32 from practising Homeopathy and in the circumstances it is not obligatory on such persons to get themselves registered under the Bombay Homeopathic Act, 1951. However, section 18(3)(ii)

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provides.....

provides an easy method for such persons to get themselves registered and it would be in the interest of such persons to get themselves registered in order to be able to enjoy the rights and privileges conferred by the Homeopathic Act, 1951.

Sd/- P.M.Lad,
25/7/52.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.12362, dated the 26th July 1952.

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L.D.R.I.No.23143,dt.4.10.52.

Please see R.L.A's opinion No.10714 dated the 27th. June 1952.

Government has accepted the view taken therein and has informed the members of the Appellate Tribunal and the ——— Registration Tribunal accordingly. Shri Dhanvale who ——— is a member of the Appellate Tribunal is unwilling to apply to the Registration Tribunal for registration of his name on the ground that it is an odd position for a member of the Appellate Tribunal which is superior to the Registration Tribunal to apply for registration to the Registration Tribunal which is inferior to it, and to submit to its jurisdiction. He has, therefore, suggested that all members of the Appellate Tribunal and the Registration Tribunal should ipso - facto be declared registered under the Act by a Govt. Resolution. Minister (L.S.G. & P.H.D.) desires to know whether the suggestion of Shri Dhanvale is legally feasible. The R.L.A. is requested to advise.

Sd/- A.D.Chitnis.
15.10.52.

D.S.(Civil) There being no provision in the Bom. Homoeopathic Act,1951 empowering Government to exempt or treat the members of the Registration or Appellate Tribunal from registration no G.R. as suggested at A on page 1 ante can be issued by Government.

Sd/- R.T.K./16.10.

R.L.A. Sd/- P.N.Lad,
16.10.

UR. to L.S.G. & P.H.D. No.17423/A dated 21/10/52.

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Office of the A.L.A.

Point (1) . - Medical practitioners though registered under the Bombay Medical Act, 1912, or the Bombay Medical Practitioners Act, 1938, will have to get themselves registered under the Bombay Homoeopathic Act, 1951, if they want to practice the homoeopathic system of medicine. The reply proposed by the Surgeon General on this point will have, therefore, to be recast.

Points (2).- Chapter IV of the Bombay Homoeopathic Act, 1951 is one of the chapters which comes into force at once. The Act came into force on 23rd January 1952 on which date it was published. Consequently, the relevant date for purposes of section 18 would be the date of publication of the Act. The view taken by the Surgeon General on this point is, therefore, not correct.

Point (3). - The period of 7 years in the first proviso to sub-section (3) of section 18 will have to be computed from the date on which Chapter IV has come into force, that is to say, from the date of the publication of the Act and not from the date of the publication of the Register. The reply proposed by the Surgeon General on this point will have, therefore, to be amended.

Point (4).- Under section 18, sub-section (3), part (a), persons, who have been engaged in the practice of homoeopathic g system of medicine for a period of not less than 10 years.....etc. as the principal occupation, can be registered. The Surgeon General has stated that homoeopathy should have been practised as an exclusive means of livelihood. That interpretation does not appear to be correct. For the words "as exclusive means of livelihood" in his reply, the words " as the principal occupation" may be substituted.

Subject to the aforesaid remarks the view taken by the Surgeon General is n correct.

Sd/- P.N.Lad,
12.12.
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. , No.20983/A dated the 13th Dec. 1952.

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